

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

**THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE**

PRESENT

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO.13304 of 2002

Between:

N. Jayaraj S/o Late Balaraj
Alluru, Kurnool District.

..... PETITIONER

AND

1 The Registrar (Vigilance) High Court of A.P., Hyderabad.

2 The Registrar (Administration) High Court of A.P., Hyderabad

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction especially one in the nature of Writ of Mandamus a) declaring that order in R.O.C.No.956/2000, Vigilance Cell dt: 16-3-2001 as

confirmed in Review by proceedings Order 8-1-2002 as illegal and arbitrary and violative of Art. 14 and 16 of the Constitution of India and b) non-consideration of my case while considering the cases of others by procdgs. dt: 26-6-2002 is violative of Arts 14 & 16 of the Constitution of India c) and further declare that petitioner is entitled to be promoted as Senior Civil Judge and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : Sri M.SURENDER RAO

Counsel for the Respondents: SMT.M.BHASKARA LAKSHMI
(SC FOR APHC)

The Court made the following :

ORAL ORDER: (Per Hon'ble the Chief Justice)

Petitioner has in the writ petition questioned the legality and validity of the order of imposition of minor punishment of stoppage of two increments without cumulative effect.

Facts in brief are that the petitioner was posted as Judicial Magistrate of First Class, Manthani, on 16th May, 1997, and worked there till 16th May, 1998. Committal order was passed on 15th July, 1997 in P.R.C.No.33 of 1996. A revision in Criminal Revision Petition No.30 of 1998 was filed against the committal order

passed by the Judicial Magistrate of First Class, Manthani, in P.R.C.No.33 of 1996 dated 15th July, 1997. The said revision was disposed of by the Sessions Judge, Karimnagar, and while disposing of the said revision, copy of the order was marked to the Registrar (Vigilance), High Court of Andhra Pradesh, with a copy of committal order, charge-sheet, statement of LW-13, who is A-4, recorded under Section 164 of Code of Criminal Procedure and the copy of order of pardon granted by the Chief Judicial Magistrate, Karimnagar, for initiation of appropriate disciplinary proceedings against the then Judicial Magistrate of First Class, Manthani. Consequently, the matter was duly considered by the High Court of Andhra Pradesh.

A notice was issued to the petitioner on 22nd December, 2000 to show cause as to why the minor penalties stipulated in Rule 9 of Andhra Pradesh Civil Service (C.C. & A) Rules, 1991 be not imposed on him for failing to discharge his duties in the matter of Committal order in P.R.C.No.33 of 1996 passed by him on

15th July, 1997. The explanation was submitted by him on

05th January, 2001. On consideration of the explanation and going through the material concerning thereto, and not being satisfied with the explanation, minor penalty was imposed of withholding two increments without cumulative effect by proceedings dated 16th March, 2001. Aggrieved by the said order, review was filed, which was dismissed on 08th January, 2002 and thus, the writ petition was filed.

The precise reply of the petitioner to show cause notice, was that he committed error unintentionally and it was not intended to damage the prosecution case. Neither the Assistant Public Prosecutor, who appeared before him in P.R.C., brought to his notice the mandatory provision in Section 306 (4) and (5) of Code of Criminal Procedure when he committed the case nor was the said mandatory provision brought to his notice by the Court Officer. There was no intention to favour the accused and it was just a sheer mistake and error on his part by not examining

A-4 in the case as witness since he had been granted pardon by the Chief Judicial Magistrate, Karimnagar. Petitioner thus admits non-compliance of the mandatory provisions in Section 306 (4) and (5) of Code of Criminal Procedure by not examining the approver, A-4, as witness. This act on the part of the petitioner cannot be said to be mere error, and his very act of making excuse that since mandatory provisions are not brought to his notice by Assistant Public Prosecutor, he did not comply with the same, is untenable. Not only such an act being gross error but also negligent in discharge of his duties, and this does not fall under those exceptional cases where the Supreme Court has held that normally disciplinary proceedings ought not to be taken against Judicial Officers merely when the judicial order passed is erroneous or bad in law, since such mistakes can be corrected in appeal, or revision. It is not in dispute that LW-13, who is A-4, was granted pardon by the Chief Judicial Magistrate, Karimnagar, and the statement of A-4 recorded under Section 164 of Code of Criminal Procedure, by the Judicial Magistrate of First Class, Sulthanabad, was not referred in committal order. This being a part of the judicial proceedings, it was obligatory on the part of the petitioner to make reference to these orders. It is not an error in deciding the case, but, in passing the committal order, for which minor punishment is imposed. The minor punishment imposed on the petitioner is proportionate to the said dereliction of duty calling for no interference in exercise of writ jurisdiction.

The Writ Petition is accordingly dismissed.

DEVINDER GUPTA, C.J.

B.SESHASAYANA REDDY, J

10-02-2005

bsc

..... REGISTRAR

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SECTION OFFICER

To

- 1 The Registrar (Vigilance) High Court of A.P., Hyderabad
- 2 The Registrar (Administration) High Court of A.P., Hyderabad
3. 2 CCs to Smt. M.Bhaskara Lakshmi, Advocate (OUT)
- 4) 2 CD copies

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